

REMARKS

No amendments are being presented in this response.

Incomplete Rejection

The Office Action appears to be incomplete in two regards. First, the Office Action rejected claims 25-40 under 35 U.S.C. 102(b) as being anticipated by Rowe (5,342,315); however, the cited basis of the rejection appears to be the abstract and figures 1-91 (see page 2). A rejection citing every figure from a lengthy patent disclosing many embodiments is not helpful to understand the basis of the rejection. In particular, the Office Action alleges that Rowe discloses “a plurality of separate semicircular seal segments arranged in a conical shape, each seal segment having a circumference greater than 180 degrees and being adapted to seal against objects positioned through the seal” without citing to any structure in Rowe. The sweeping citation to Rowe does not designate the particular part relied on, or specify and clearly explain the rejected claim, as required by 37 CFR 1.104(c)(2).

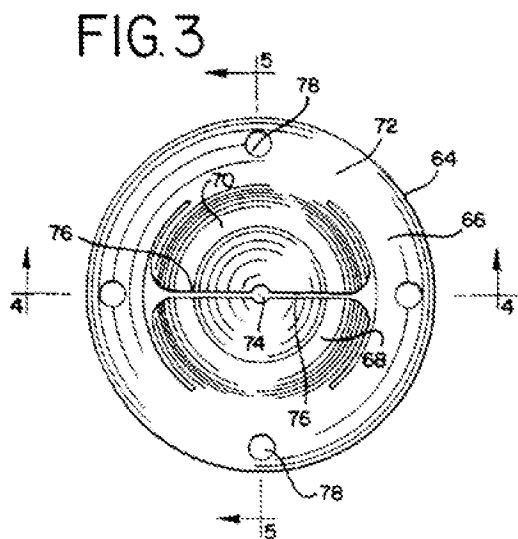
Second, the Office Action purports to reject claims 25-40; however, the rejection does not address all limitations recited in the independent claims. Consider for instance the claim language “elastomeric members circumscribing an aperture in an interwoven pattern” as recited in independent claim 30. Also consider the claim language “a plurality layered elastomeric members arranged circumferentially about an aperture in an alternating over and under pattern and forming a conical shape” as recited in independent claim 34.

Based on the foregoing, the Office Action does is not complete as to all matters as required by 37 CFR 1.104(b). Accordingly, Applicant respectfully request the Office to withdraw the final rejection.

102(b) Over Rowe

The Office Action rejected claims 25-40 under 35 U.S.C. 102(b) as being anticipated by Rowe (5,342,315). As indicated above, Applicants are not sure which features of Rowe are being compared to the claim limitations. Nevertheless, Applicants have reviewed Rowe and to the best of our ability will try to address the Office’s concerns.

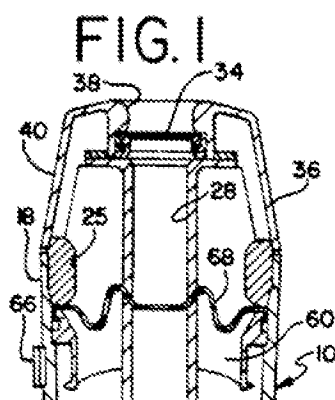
Rowe discloses a trocar assembly including an elastomeric seal member for sealing as an elongate instrument passes through an opening formed in the seal member. A protector assembly is positioned proximally of the seal member in facing relationship to the seal member. The protector assembly includes at least two axially aligned protector members each having leaf portions defining an opening therethrough in axial alignment with the opening in the seal member. Fig. 3 of Rowe illustrates a protector member:



The leaf portions 68 and 70 define an opening 74 formed therethrough in axial alignment with the opening 48 formed in seal member (not shown above but referenced as 34). An inserted elongate member contacts the leaf portions and causes them to move distally with the seal member 34 increasing the size of the opening 74 in the protector members to permit the instrument to pass therethrough and then through the opening (not shown above but referenced as 48) in the seal member 34, without causing damage to the seal member 34.

If Office Action is comparing Rowe's leaf portions 68 and 70 with the "semicircular seal segments" currently claimed, such a comparison is misplaced. Indeed, the leaf portions 68 and 70 of Rowe do not seal against insufflatory gases, but rather protect the seal member from damage. Instead, the seal member 34 of Rowe is used to seal against insufflatory gases. Indeed, Rowe teaches that the "opening 48 is formed through [the seal 34] and is dimensioned to permit an obturator or instrument to pass therethrough in sealing engagement therewith." (7:47-50).

Rowe contemplates an elastomeric seal member 34 is generally of the type disclosed in U.S. patent application Ser. No. 07/779,040, now issued as US Patent 5,209,736. (See Rowe 7:38-42). A portion of the '736 patent is reproduced below:



The '736 patent discloses "an annular or apertured sealing gasket 34 to seal against an implement directed therethrough, as is well known in the art." (3:65-67). Thus, it appears the seal 34 used to form a seal against the instrument in Rowe is a traditional septum seal, which cannot be fairly compared to the semicircular seal segments currently claimed. Indeed, the structure of Rowe appears in many respects to be analogous to the Ritchart reference previously distinguished in the prior response.

Double Patenting

Claims 25-40 were provisionally rejected on the ground of nonstatutory obviousness type double patenting as being unpatentable over claim 1-32 of copending Application No. 10/815356. While the Office is aware of the pending '356 application, please note that an amendment in response was recently filed in that case. Applicants are prepared to submit a terminal disclaimer upon receiving a note of allowability of the claims.

Conclusion

Based on the foregoing, all of the pending claims are in a condition for allowance. Applicants traverse all rejections and request reconsideration, and Applicants request an early notice of allowability.

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Respectfully submitted,

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